

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

_____)	
PEDRO J. PACHECO-BARRAZA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 3:19-CV-01406
)	
KILOLO KIJAKAZI,)	
Acting Commissioner of Social Security, ¹)	
)	
Defendant.)	
_____)	

ORDER

July 11, 2023

SOROKIN, J.²

Pedro J. Pacheco-Barraza has filed a motion seeking an award of attorney fees and expenses pursuant to the Social Security Act, 42 U.S.C. § 406(b)(1). Doc. No. 35.³ The Acting Commissioner has responded by notifying the Court that she takes no position on the request, and by providing a helpful recitation of the legal standards governing such a request. Doc. No. 37. For the reasons that follow, the Court **ALLOWS** Pacheco-Barraza's motion.

¹ When this action began, the defendant was identified as Andrew Saul, who was then the Commissioner of Social Security. The name of the current Acting Commissioner of Social Security has been substituted. Fed. R. Civ. P. 25(d).

² Of the District of Massachusetts, sitting by designation.

³ Citations to "Doc. No. __ at __" refer to submissions appearing on the electronic docket in this case using the Document Number assigned by CM/ECF. Pincites are to the page numbers appearing in the header appended to each document by CM/ECF, and may differ from numbering appearing elsewhere in the original document.

On December 22, 2020, this Court issued an Order reversing the Commissioner’s denial of Pacheco-Barraza’s application for disability benefits and remanded to the agency for further proceedings. Doc. No. 29. Though the remand occurred with the Commissioner’s agreement, such consent came only after Pacheco-Barraza’s counsel had prepared and filed a substantive motion and memorandum identifying and supporting challenges to the underlying agency action. Doc. No. 25. Soon after the remand order, the Court allowed an unopposed request by Pacheco-Barraza’s counsel for an award of fees and expenses pursuant to the Equal Access to Justice Act (“EAJA”). Doc. No. 34.

Proceedings at the agency level following this Court’s remand ultimately yielded a decision to award benefits, including substantial past-due benefits for Pacheco-Barraza and for his family. Doc. No. 35-2. Notice of this decision issued on June 21, 2023. Id. Promptly thereafter, on June 30, 2023, Pacheco-Barraza filed the pending motion for a fee award pursuant to the Social Security Act. Doc. No. 35. He supported his request with copies of the contingent-fee agreement between Pacheco-Barraza and counsel, the agency’s recent favorable decision awarding benefits, and billing records demonstrating the time spent by counsel in connection with the action in this Court that led to the remand. Doc. Nos. 35-1, 35-2, 35-3.

The Social Security Act permits an award of “a reasonable fee” to an attorney who has successfully represented a claimant in federal court. 42 U.S.C. § 406(b)(1)(A); see generally Gisbrecht v. Barnhart, 535 U.S. 789 (2002). Having reviewed these submissions and the record in this case, the Court finds Pacheco-Barraza’s request is both timely and reasonable. It is timely, as it was filed within thirty days of the notice conveying the relevant agency decision. See D.P.R. L.R. 9(d)(2). And, it is reasonable in the context presented here. The total amount sought is well under twenty-five percent of the past-due benefits awarded by the agency here—

the cap on such an award pursuant to both the contingent-fee agreement at issue and the statute Pacheco-Barraza's counsel invokes.⁴ Counsel secured a remand from this Court after performing meaningful work (more than thirty hours) that included preparation and filing of motion papers advancing substantive challenges to the underlying proceedings. Those efforts paved the way for the agency to not only revisit and correct its improper denial of benefits to Pacheco-Barraza, but to also award significant past-due sums that had accrued during the period in which benefits were wrongly withheld. These circumstances reasonably entitle counsel to the amount sought in the pending motion.⁵

Accordingly, the Court hereby ORDERS as follows:

- 1) Pacheco-Barraza's motion for fees (Doc. No. 35) is ALLOWED;
- 2) Pursuant to the Social Security Act, 28 U.S.C. § 406(b), an attorney fee of \$20,345 is AUTHORIZED for work performed on behalf of Pacheco-Barraza in this Court; and
- 3) Pacheco-Barraza's counsel shall RETURN \$6,851.72, the amount previously awarded by the Court pursuant to the EAJA, Doc. No. 34, to Pacheco-Barraza within three business days of receiving the amount authorized herein. See Gisbrecht, 535 U.S. at 796.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge

⁴ The agency here awarded Pacheco-Barraza a total of more than \$136,000 in past-due benefits. Counsel seeks a fee award of less than fifteen percent of that amount.

⁵ It bears noting that, in cases cited by counsel, other sessions of this Court have issued fee awards pursuant to the Social Security Act that, if expressed in terms of an hourly rate, fall within a range comparable to the award sought here. See Doc. No. 35 at 4.